

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 FOR THE COUNTY OF YAVAPAI

2012 FEB -7 AM 9:21 ✓

SANDRA K. HARRHAM, CLERK

BY: Jaqueline Harshman

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR201080049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE WARREN R. DARROW

TELEPHONIC SCHEDULING CONFERENCE

JULY 29, 2011

Camp Verde, Arizona

ORIGINAL

REPORTED BY
 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No V1300CR201080049
7 JAMES ARTHUR RAY,) Court of Appeals
8 Defendant) Case No. 1 CA-CR 11-0895
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15 BEFORE THE HONORABLE WARREN R. DARROW
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25 MINA G HUNT
AZ CR NO 50619
CA CSR NO 8335

Mina G Hunt (928) 554-8522

1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Friday, July 29,
3 2011, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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Mina G Hunt (928) 554-8522

1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE
4 BY: SHEILA SULLIVAN POLK, ATTORNEY
5 BY: BILL R. HUGHES, ATTORNEY
6 255 East Gurley
7 Prescott, Arizona 86301-3868
8 (Appearing by telephone.)
9

10 For the Defendant:

11 THOMAS K. KELLY, PC
12 BY: THOMAS K. KELLY, ATTORNEY
13 425 East Gurley
14 Prescott, Arizona 86301-0001
15 (Appearing by telephone.)
16

17 MUNGER TOLLES & OLSON, LLP
18 BY: LUIS LI, ATTORNEY
19 BY: TRUC DO, ATTORNEY
20 355 South Grand Avenue
21 Thirty-fifth Floor
22 Los Angeles, California 90071-1560
23 (Appearing by telephone.)
24
25

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1 P R O C E E D I N G S

10 08 35AM 2 THE COURT: Good Morning. This is
10 08 35AM 3 V1300CR201080049, State versus James Arthur Ray.
10 08 38AM 4 This is the time set for a scheduling conference.
10 08 43AM 5 And everybody who is appearing or attending would
10 08 46AM 6 be on the line. It's all telephonic.
10 08 55AM 7
10 08 58AM 8

10 09 00AM 9 What I'm going to do is go down the list
10 09 02AM 10 I have. I'm going to call the names and then ask
10 09 07AM 11 if there are other people present to just let me
10 09 12AM 12 know who is participating or listening in. So I'll
10 09 15AM 13 be announcing formal appearances. And then other
10 09 16AM 14 people who are named will be people who are
10 09 19AM 15 attending, essentially.

10 09 19AM 16 First on the list, Tom Kelly.

10 09 23AM 17 MR. KELLY: Correct, Judge.

10 09 24AM 18 THE COURT: Do you have somebody there with
10 09 27AM 19 you?

10 09 27AM 20 MR. KELLY: I have Mark Duncan.

10 09 29AM 21 THE COURT: Luis Li?

10 09 31AM 22 MR. LI: Present, Your Honor.

10 09 32AM 23 THE COURT: Truc Do?

10 09 34AM 24 MS. DO: Good morning, Your Honor.

10 09 35AM 25 THE COURT: Good morning. Anyone else present
10 09 37AM with either Mr. Li or Ms. Do?

10 09 38AM MR. LI: No, Your Honor.

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10 09 38AM 1 MS. DO: No, Your Honor.
 10 09 40AM 2 THE COURT: Okay. And then I'll ask one of
 10 09 43AM 3 the defense attorneys. Because we have so many
 10 09 45AM 4 people on the line, please identify who would be
 10 09 47AM 5 speaking. But if one of the defense attorneys
 10 09 51AM 6 would tell me if Mr. Ray's appearance is being
 10 09 54AM 7 waived.

10 09 55AM 8 MR. KELLY: Judge, this is Tom Kelly. We
 10 09 58AM 9 waive the presence of our client. We've had this
 10 10 00AM 10 discussion with him yesterday. He understood he
 10 10 03AM 11 had the opportunity to appear telephonically and
 10 10 06AM 12 waives that opportunity.

10 10 09AM 13 THE COURT: There is not going to be any
 10 10 11AM 14 substantive discussion. It's not going to take
 10 10 14AM 15 place in this hearing. This is strictly scheduling
 10 10 17AM 16 and somewhat tentative except with regard to
 10 10 20AM 17 August 16. And I'm going to make that firm. I
 10 10 22AM 18 want to get through the other appearances.

10 10 25AM 19 Then I have on my list also on the line,
 10 10 28AM 20 Ms. Polk and Mr. Hughes?

10 10 31AM 21 MS. POLK: Good morning, Your Honor.

10 10 32AM 22 MR. HUGHES: Good morning, Your Honor.

10 10 34AM 23 THE COURT: Is there anyone else with you,
 10 10 37AM 24 anybody else?

10 10 37AM 25 MS. POLK: Yes, Your Honor. We have with us
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10 10 38AM 1 Pam Moreton, from victim services, Kathy Durrer and
 10 10 43AM 2 Detective Ross Diskin.

10 10 44AM 3 THE COURT: Okay. And then also on the line I
 10 10 46AM 4 believe are Lily Clark.

10 10 49AM 5 MS. CLARK: Good morning.

10 10 50AM 6 THE COURT: Good morning.

10 10 50AM 7 And then Bob Magnanini.

10 10 54AM 8 MR. MAGNANINI: Yes, Your Honor. Good
 10 10 55AM 9 morning. I also have my cousin, Bob Brown, who is
 10 10 58AM 10 Kirby Brown's brother.

10 11 00AM 11 THE COURT: Okay. Thank you. So I think I've
 10 11 03AM 12 called everybody's name. If there is anybody out
 10 11 06AM 13 there I haven't mentioned, please speak up.

10 11 09AM 14 I want to talk about August 16 first.

10 11 12AM 15 I'm going to confirm that date. I'm going to
 10 11 14AM 16 confirm August 16, the whole day, for oral argument
 10 11 17AM 17 on the pending motion for new trial.

10 11 19AM 18 I'm not going to combine presentence
 10 11 22AM 19 hearing material with the oral argument. The oral
 10 11 27AM 20 argument has to be considered independently. And
 10 11 33AM 21 I'm going to want some time myself after I hear
 10 11 36AM 22 that argument.

10 11 38AM 23 So it will be a full day of oral argument
 10 11 40AM 24 on August 16. That's been set aside. And as -- I
 10 11 46AM 25 have 10:00 to 5:00, essentially. And if you get

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10 11 51AM 1 five hours of argument there for both sides, that
 10 11 56AM 2 would leave for the full day two and a half hours
 10 11 58AM 3 for each side. And I'll hear from the parties on
 10 12 05AM 4 this. But I believe that would be sufficient.

10 12 07AM 5 Mr. Kelly, I know that you had requested
 10 12 10AM 6 more time. But one thing I'm going to be doing is
 10 12 13AM 7 asking why people think they need the time that's
 10 12 16AM 8 being requested. And I would be allowing the full
 10 12 19AM 9 day for that argument.

10 12 22AM 10 Mr. Kelly.

10 12 22AM 11 MR. KELLY: Your Honor, it's my understanding
 10 12 24AM 12 the proceeding begins at 10:00 a.m.?

10 12 26AM 13 THE COURT: Yes.

10 12 28AM 14 MR. KELLY: And I believe that's more than
 10 12 30AM 15 sufficient to address the motion for new trial.

10 12 32AM 16 THE COURT: Well, you asked for a whole day
 10 12 34AM 17 yourself at one point. And I'm saying now this is
 10 12 36AM 18 going to give each side two and a half hours and
 10 12 39AM 19 that's it.

10 12 43AM 20 MR. KELLY: I understood you, Judge, to say
 10 12 46AM 21 that we would not be discussing any aspect of
 10 12 51AM 22 mitigation. Correct?

10 12 51AM 23 THE COURT: That's correct. It would not be
 10 12 53AM 24 appropriate to combine any type of presentence
 10 12 57AM 25 consideration when there is a pending motion for

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10 12 59AM 1 new trial.

10 12 59AM 2 MR. KELLY: I believe that's sufficient,
 10 13 02AM 3 August 16 for the motion for new trial.

10 13 04AM 4 THE COURT: I know it's fully briefed. I got
 10 13 07AM 5 the reply in recently.

10 13 09AM 6 Mr. Hughes or Ms. Poke.

10 13 10AM 7 MS. POLK: That is fine, Your Honor.

10 13 11AM 8 THE COURT: Okay. So I'll confirm that. It's
 10 13 14AM 9 August 16. It's all day. But the time -- it
 10 13 17AM 10 starts at 10:00 a.m. That's when the argument
 10 13 20AM 11 starts. And two and a half hours for each side.

10 13 24AM 12 The -- with regard to presentence hearing
 10 13 29AM 13 time, I want to hear from the parties on that. I
 10 13 36AM 14 want to tell you that I do want some discussion
 10 13 38AM 15 about availability. I think there are a number of
 10 13 42AM 16 people from both sides or on behalf of both sides
 10 13 47AM 17 that would perhaps wish to appear. I want to give
 10 13 51AM 18 the parties an opportunity to work those logistics
 10 13 54AM 19 out to the extent possible.

10 13 58AM 20 I don't want to have this right on the
 10 14 01AM 21 heels of the oral argument on a motion for new
 10 14 05AM 22 trial because -- for obvious reasons. Because the
 10 14 09AM 23 obvious implication that the motion is granted.
 10 14 13AM 24 But I would want to have realistic time frames if
 10 14 17AM 25 the matter is going to proceed to the mitigation

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10:14:20AM 1 and -- well, also for aggravating circumstances and
10:14:28AM 2 the sentencing manner or sense.

10:14:33AM 3 So, Mr. Kelly, again, the state -- I'm
10:14:37AM 4 sorry. The defense has actually made the request.
10:14:43AM 5 And the initial request was for three days to
10:14:49AM 6 present this presentence information.

10:14:49AM 7 Mr. Kelly.

10:14:49AM 8 MR. KELLY: That's correct, Judge. Judge, we
10:14:51AM 9 have spent several hours narrowing a list of
10:14:58AM 10 potential witnesses. And yesterday afternoon the
10:15:00AM 11 list was narrowed to approximately 30 to 32
10:15:03AM 12 witnesses.

10:15:04AM 13 From that list we are further reducing
10:15:09AM 14 the number of witnesses down to around 18
10:15:13AM 15 witnesses. That's an approximate number, Judge.
10:15:15AM 16 Those 18 witnesses will not be -- it won't be
10:15:21AM 17 redundant in terms of their testimony. They will
10:15:24AM 18 establish approximately six to eight mitigating
10:15:27AM 19 factors for your consideration.

10:15:29AM 20 So simple mathematics, approximately an
10:15:32AM 21 hour per witness, we came up with three days of
10:15:37AM 22 trial time.

10:15:37AM 23 THE COURT: Okay.

10:15:39AM 24 Ms. Polk, what would the state be
10:15:43AM 25 requesting? Any remarks you would have or comments
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10:15:45AM 1 you have on the defense request as well?

10:15:46AM 2 MS. POLK: Your Honor, at this point the
10:15:51AM 3 state, quite frankly, is in a reactive mode. When
10:15:57AM 4 the defense indicated they wanted a half a day, we
10:16:00AM 5 indicated four hours is sufficient to the state.
10:16:03AM 6 This is new information to the state that the
10:16:05AM 7 defense has 18 witnesses. And until we get
10:16:08AM 8 disclosure and an opportunity to do some discovery,
10:16:12AM 9 we are at a bit of a disadvantage in terms of
10:16:17AM 10 letting the Court know what we would need.

10:16:20AM 11 All I can do is respond that, of course,
10:16:23AM 12 we want the opportunity to cross-examine the
10:16:25AM 13 witnesses. But also upon receiving the disclosure,
10:16:31AM 14 then there may be some issues that we need to
10:16:33AM 15 respond to. And we would have to let the Court
10:16:37AM 16 know.

10:16:37AM 17 THE COURT: I'm sorry. I didn't mean to
10:16:40AM 18 interrupt. Go ahead.

10:16:41AM 19 MS. POLK: I was going to say that I think the
10:16:43AM 20 best we can do at this point is ask for equal time
10:16:47AM 21 not knowing who these 18 witnesses are, what these
10:16:57AM 22 six to eight mitigating factors are.

10:16:57AM 23 MR. KELLY: Judge, I understand that.

10:16:58AM 24 THE COURT: Before I go any further,
10:17:01AM 25 Mr. Kelly, I need one thing established on the
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10:17:02AM 1 record. The rules contemplate sentencing within 60
10:17:08AM 2 days, the initial sentencing to be set within 30
10:17:10AM 3 days. And it was in late July. And then, of
10:17:13AM 4 course, time is waived. There has been a request
10:17:15AM 5 by the defense for a hearing. And that's in due
10:17:19AM 6 course.

10:17:19AM 7 It contemplates 60 days. Before we go
10:17:22AM 8 further, I want to make certain there is not a time
10:17:28AM 9 consideration out there that the defense is looking
10:17:30AM 10 at. That's what's under the rules.

10:17:32AM 11 MR. KELLY: There is not, Judge. We continue
10:17:34AM 12 to waive time.

10:17:34AM 13 THE COURT: Do you have full authority from
10:17:36AM 14 Mr. Ray to do that?

10:17:37AM 15 MR. KELLY: I do.

10:17:40AM 16 THE COURT: Then the next aspect. If we're
10:17:43AM 17 looking for six days -- and the way I'm looking at
10:17:47AM 18 it is this way: Yes, there is another calendar out
10:17:51AM 19 there with a number of cases, a number of trials.
10:17:53AM 20 That has to be accommodated to this case. It's
10:17:57AM 21 that simple.

10:17:58AM 22 And, again, we've got this motion out
10:18:02AM 23 there that makes all of this necessarily tentative.
10:18:06AM 24 But with the assumption -- and it's only an
10:18:08AM 25 assumption for purposes of planning. But if the
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10:18:13AM 1 motion is denied and it goes forward, when? I've
10:18:19AM 2 got an idea now why people want the time and why
10:18:22AM 3 they're requesting -- you know -- by a four-day
10:18:26AM 4 trial week a week and a half.

10:18:28AM 5 But when would you suggest?

10:18:32AM 6 MR. KELLY: Judge, this is Tom Kelly. Our
10:18:36AM 7 only concern -- well, we have scheduling problems.
10:18:39AM 8 But not discussing any of our individual scheduling
10:18:46AM 9 problems, our only concern is that we have a date
10:18:49AM 10 certain, because each of these 18 witnesses reside
10:18:53AM 11 out of state, so that we can schedule their
10:18:57AM 12 presence here in Arizona.

10:18:59AM 13 And, secondly, Judge, our preference
10:19:02AM 14 would be to conduct this hearing all in the same
10:19:07AM 15 week.

10:19:08AM 16 In response to Ms. Polk's concern, she is
10:19:13AM 17 correct. We have not yet filed our formal pleading
10:19:18AM 18 identifying the proposed mitigating factors, nor
10:19:20AM 19 the witnesses that will present evidence
10:19:23AM 20 establishing those factors.

10:19:24AM 21 The reason it has not been disclosed is
10:19:27AM 22 we're waiting for today's conference to find out
10:19:33AM 23 how many days we're going to be allotted and when
10:19:36AM 24 those days are and when we'll make the necessary
10:19:38AM 25 disclosure. That may then give her an idea of the
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10:19:41AM 1 length of time that she may wish to present
 10:19:44AM 2 rebuttal, if any.
 10:19:50AM 3 THE COURT: Okay. I don't know -- I wanted to
 10:20:00AM 4 know roughly a when at least roughly. Let me ask
 10:20:00AM 5 Ms. Polk.
 10:20:01AM 6 Ms. Polk, where do you believe this would
 10:20:05AM 7 take place?
 10:20:06AM 8 MS. POLK: Your Honor, the state is available
 10:20:09AM 9 whenever the Court can conduct a hearing.
 10:20:12AM 10 Obviously our concern is to have the defendant
 10:20:15AM 11 timely sentenced. There are considerations from
 10:20:18AM 12 the victims' perspective. And moving this case
 10:20:23AM 13 forward to conclusion is very, very important. But
 10:20:27AM 14 we'll make ourselves available whenever the Court
 10:20:29AM 15 wants to set the hearing.
 10:20:31AM 16 THE COURT: I am assuming you have people you
 10:20:35AM 17 have from out of state. Is that true, Ms. Polk?
 10:20:39AM 18 MS. POLK: Yes, Your Honor.
 10:20:40AM 19 THE COURT: What I'd like to do and what I'm
 10:20:43AM 20 going to do is I'm going to ask the parties to -- I
 10:20:50AM 21 need to come up with a rough time. Because as I
 10:20:52AM 22 have indicated, a matter of what's going on. And I
 10:20:57AM 23 know the parties are aware there is another case on
 10:20:59AM 24 this division's schedule that's set for a
 10:21:06AM 25 considerable length of time.

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10:21:07AM 1 So I need to have some time, Mr. Kelly,
 10:21:10AM 2 because this case -- I want to get the dates set
 10:21:13AM 3 and go from there. What I want to do is get a
 10:21:17AM 4 rough time. But I'm going to direct that you get
 10:21:19AM 5 together so you make sure you know who is going to
 10:21:22AM 6 be present. It may be a situation where there are
 10:21:26AM 7 people you prefer to be present. It might not work
 10:21:28AM 8 out. And other people you think really must be
 10:21:30AM 9 present. That might be true for both sides.
 10:21:32AM 10 So I want to get a time frame that people
 10:21:35AM 11 can live with and then get together. And we'll try
 10:21:38AM 12 to get very specific and do that by minute entry.
 10:21:43AM 13 Now, excuse me, Mr. Kelly. Go ahead.
 10:21:44AM 14 MR. KELLY: Judge, I was not clear in my
 10:21:46AM 15 response. In response to your specific question, I
 10:21:48AM 16 know that we had a conflict. It's Mr. Li's
 10:21:53AM 17 conflict, August 19 through, I believe, the 30th.
 10:21:58AM 18 The month of September, looking at my calendar,
 10:22:04AM 19 we're available, Judge, at your discretion.
 10:22:12AM 20 I don't know whether it's necessary to
 10:22:13AM 21 discuss any months past that or not.
 10:22:13AM 22 THE COURT: Let's not. I would certainly want
 10:22:19AM 23 things be completed by then.
 10:22:23AM 24 Ms. Polk.
 10:22:23AM 25 MS. POLK: Your Honor, the state would also --

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10:22:25AM 1 and again, just reiterate the state's concern that
 10:22:29AM 2 this move forward in a timely fashion. And, again,
 10:22:32AM 3 we are available at any time.
 10:22:37AM 4 THE COURT: Then what I would do is if both
 10:22:43AM 5 sides are just telling me September, I would be
 10:22:48AM 6 looking at a calendar and just having a minute
 10:22:51AM 7 entry set the six days and sending it out.
 10:23:00AM 8 MS. POLK: Your Honor, the state would request
 10:23:01AM 9 that this move forward in August.
 10:23:04AM 10 THE COURT: Well, that's why I was addressing
 10:23:07AM 11 that too.
 10:23:17AM 12 MR. KELLY: Judge, our first available date in
 10:23:19AM 13 August is August 30th. Or, excuse me. Maybe I
 10:23:38AM 14 misspoke. It might be September 1st. Looking at
 10:23:42AM 15 my calendar. August 16 has been previously
 10:23:46AM 16 confirmed.
 10:23:56AM 17 MR. LI: What does the first full week in
 10:23:58AM 18 August look like? Could we do that on the 5th?
 10:24:06AM 19 THE COURT: Who presented that question,
 10:24:08AM 20 please?
 10:24:08AM 21 MR. LI: Sorry. This is Luis Li.
 10:24:22AM 22 THE COURT: Okay. You said the first full
 10:24:24AM 23 week in August?
 10:24:26AM 24 MR. LI: September.
 10:24:27AM 25 THE COURT: I think you said August. And I

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10:24:30AM 1 was puzzled --
 10:24:30AM 2 MR. LI: I meant September. Sorry,
 10:24:31AM 3 Your Honor.
 10:24:31AM 4 THE COURT: That's okay. I did mention the
 10:24:34AM 5 necessity to keep the two pending matters separate.
 10:24:39AM 6 MR. LI: I apologize. I meant September.
 10:24:42AM 7 THE COURT: Well, that's -- I've indicated,
 10:24:46AM 8 I'm going to set it, and the other matters are
 10:24:48AM 9 going to be accommodated to this case.
 10:24:56AM 10 MS. POLK: Your Honor, the state would just
 10:24:57AM 11 like to make a record of our objection. I know
 10:25:00AM 12 that the Court obtained from the defense the
 10:25:05AM 13 defendant's waiver of the time limits. But
 10:25:08AM 14 Rule 26.3(d) requires the Court to find good cause
 10:25:20AM 15 to extend the date beyond the 60 days after
 10:25:24AM 16 determination of guilt. The determination of guilt
 10:25:26AM 17 came -- I can't recall the date. But in late June.
 10:25:30AM 18 And clearly extending into September is beyond that
 10:25:34AM 19 60 days.
 10:25:35AM 20 THE COURT: I'm very aware of that. And
 10:25:38AM 21 that's why I wanted both sides to give me legal
 10:25:42AM 22 positions. The starting point with the defense was
 10:25:44AM 23 some kind of waiver.
 10:25:45AM 24 And, Ms. Polk, I wanted you and
 10:25:48AM 25 Mr. Hughes to tell me where you stood with specific

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10:25:02AM 1 times. And now you've made that clear. You want
10:25:56AM 2 this completed in August.

10:26:01AM 3 MS. POLK: Judge, if I can just clarify. I
10:26:06AM 4 think I've tried to let the Court know the state's
10:26:11AM 5 position is that this should move forward within
10:26:08AM 6 the time limits and that we will make ourselves
10:26:11AM 7 available whenever the Court wants to set the
10:26:14AM 8 matter.

10:26:15AM 9 Rule 26.3(b) says if a presentence is
10:26:19AM 10 under Rule 26.7 or if good cause is shown, the
10:26:25AM 11 trial court may reset the date of sentencing within
10:26:27AM 12 60 days after determination of guilt. That's the
10:26:30AM 13 only rule I'm aware of that addresses sentencing.

10:26:32AM 14 But clearly this rule contemplates that
10:26:35AM 15 sentencing would occur within 60 days in all
10:26:38AM 16 circumstances and that we wouldn't go beyond the 60
10:26:42AM 17 days.

10:26:43AM 18 THE COURT: That's what I prefaced is that's
10:26:46AM 19 the normal -- that is the time frame. It
10:26:49AM 20 contemplates 60 days. I've never known that not to
10:26:53AM 21 be a waivable time looking at all the other
10:27:00AM 22 considerations.

10:27:03AM 23 I'll ask the defense.

10:27:09AM 24 MR. KELLY: Judge, again, we have 18
10:27:13AM 25 witnesses, numerous mitigating factors. We need to
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10:27:16AM 1 make disclosure. We need to interview, prepare,
10:27:19AM 2 those witnesses for their presentation to the
10:27:22AM 3 Court, make them available perhaps for a prehearing
10:27:25AM 4 interview. And we're simply not available between
10:27:28AM 5 August 19 and August 30.

10:27:31AM 6 THE COURT: I'm aware of the findings that
10:27:33AM 7 must be legitimately made, Mr. Kelly. But is the
10:27:38AM 8 defense aware of anything that the 60 days is --
10:27:44AM 9 what's your view of the 60 days?

10:27:46AM 10 MR. KELLY: Judge, my view on the 60 days is
10:27:48AM 11 that it can be waived by the defendant, which we've
10:27:52AM 12 done. And it can be extended by the Court for good
10:27:54AM 13 cause, which exists.

10:27:55AM 14 THE COURT: And, Ms. Polk, I'm also aware of
10:27:57AM 15 the other general victims' rights laws and
10:28:00AM 16 provisions as well talking about speedy trial and
10:28:02AM 17 all of that that factors in. I'm very aware of
10:28:07AM 18 that.

10:28:08AM 19 I don't know that it would help. I was
10:28:09AM 20 going to direct it, but because both sides are
10:28:14AM 21 talking to a number of witnesses, if it made
10:28:20AM 22 sense -- and I'm indicating September and early
10:28:23AM 23 September is where I would try to be looking at.

10:28:23AM 24 There are currently some summons, jury
10:28:28AM 25 summons, out in another matter. And that's
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10:28:32AM 1 something that I know I've talked about having to
10:28:34AM 2 accommodate other cases to this case. And that's
10:28:38AM 3 where it is, and that's what I'm doing.

10:28:40AM 4 However, when you're dealing with large
10:28:43AM 5 jury pools and you have summonses, there can be --
10:28:47AM 6 that would be something that just has to be looked
10:28:50AM 7 at as well. But if you don't think it would do
10:28:52AM 8 any -- wouldn't do any good or wouldn't be any
10:28:57AM 9 benefit to get together, make sure you have the
10:29:01AM 10 witness list nailed down and say here's what we
10:29:04AM 11 want, September 8 through whatever -- if it's not
10:29:08AM 12 useful, I'll just go ahead with the minute entry.

10:29:12AM 13 Do you think a dialogue would make any
10:29:14AM 14 sense, Ms. Polk?

10:29:16AM 15 MR. KELLY: Judge, this is Tom Kelly. I
10:29:19AM 16 prefer you just set the dates.

10:29:21AM 17 THE COURT: Okay. I'll do that by minute
10:29:23AM 18 entry. That's what I'll do.

10:29:29AM 19 Anything else for the record, anybody?

10:29:33AM 20 MS. POLK: No, Your Honor. Thank you.

10:29:34AM 21 MR. KELLY: No, Judge. Thank you.

10:29:35AM 22 THE COURT: Okay. Then we will recess. We'll
10:29:38AM 23 hang up now. Thank you.

10:29:41AM 24 MR. LI: Thank you.

25 (The proceedings concluded.)
Mina G. Hunt (928) 554-8522

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss. REPORTER'S CERTIFICATE

3
4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action

16 In witness whereof, I have affixed my
17 signature this 2nd day of February, 2012.

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24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

Mina G. Hunt (928) 554-8522

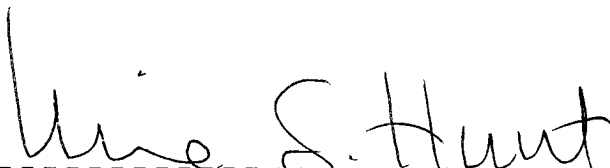
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